

9-8/86

U.S. DEPARTMENT OF LABOR

SECRETARY OF LABOR
WASHINGTON, D.C.

In the Matter of)	
)	
NANCY COOMER)	
)	
v.)	Case No. 81-CETA-256
)	
CINCINNATI, ETA, OHIO, and)	
CINCINNATI ZOO)	

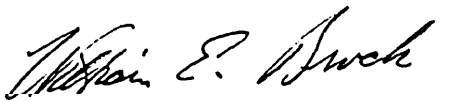
ORDER OF DISMISSAL

On January 16, 1986, I remanded this case to the Office of Administrative Law Judges of this Department for further proceedings and a recommended decision in the light of the earlier remand order of the United States Court of Appeals for the Sixth Circuit in Cincinnati, ETA, Ohio; Cincinnati Zoo v. Nancy Coomer; Secretary of Labor: United States Department of Labor (No. 84-3361).

On June 10, 1986, Administrative Law Judge (ALJ) Charles W. Campbell of this Department issued a "Recommended Decision" in which he (1) found "reasonable ... in view of the Court's order and the other circumstances of this case" a written "Stipulation and Settlement Agreement" between the City of Cincinnati and this Department's Employment and Training Administration Grant Officer in Chicago, Illinois; and (2) recommended that the "Stipulation and Settlement Agreement" be accepted and that this proceeding be dismissed. Copies of the ALJ's "Recommended Decision" and of the "Stipulation and Settlement Agreement" are appended to this order.

Upon consideration of the remand order of the court of appeals, the record, and the "Stipulation and Settlement Agreement," I accept the ALJ's recommended decision. Accordingly, this case IS DISMISSED.

SO ORDERED.


Secretary of Labor

Dated: **SEP 18 1986**
Washington, D.C.

ECOC ol # 860008720

U.S. Department of Labor

Office of Administrative Law Judges
304A U.S. Post Office and Courthouse
Cincinnati, Ohio 45202
(513) 684-3252



In the matter of

NANCY COOMER

v.

CINCINNATI ETA, OHIO, AND
CINCINNATI ZOO

Date Issued: JUN 10 1986

Case No. 81-CETA-256

RECOMMENDED DECISION

On January 16, 1986 the Secretary of Labor remanded the above-entitled matter to the office of Administrative Law Judges for further proceedings and a recommended decision in the light of the order, filed July 16, 1985, of the United States Court of Appeals for the Sixth Circuit in Cincinnati ETA, Ohio; Cincinnati zoo v. Nancy Coomer; Secretary of Labor; United States Department of Labor (No. 84-3361).

On May 20, 1986 the parties to this case entered a written "Stipulation and Settlement Agreement" in which it was agreed that the City of Cincinnati pay the sum of \$4,632.74 to the Employment and Training Administration, United States Department of Labor, and that the remaining amount originally in controversy was "allowed," i.e., no longer claimed by the Department of Labor. The parties further agreed to the dismissal of this proceeding. A copy of the stipulation is attached to this recommended decision.

I find that the stipulation entered by the parties is a reasonable one in view of the Court's order and the other circumstances of the case.

Accordingly, it is my recommended decision that the aforesaid stipulation of the parties be accepted and that this proceeding be dismissed.

Charles W. Campbell
Administrative-Law Judge

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UNITED STATES DEPARTMENT OF LABOR
OFFICE OF ADMINISTRATIVE LAW JUDGES

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In the Matter of:

NANCY COOMER,

vs.

CINCINNATI ETA, OHIO, AND
CINCINNATI 200.

Case No. 81-CETA-256

STIPULATION AND SETTLEMENT AGREEMENT

The Grant Officer and the City of Cincinnati hereby stipulate and agree as follows:

1. On April 21, 1981, the Grant Officer issued a final determination, with respect to CETA Complaint No. 79-CETA-5-321-C;
2. The April 21, 1981 final determination issued by the Grant Officer disallowed costs representing wages and fringe benefits paid to twelve (12) program participants. The disallowance was based upon the allegation that the aforementioned twelve (12) participants were ineligible;
3. The City of Cincinnati (hereinafter Prime Sponsor) filed an exception to the Grant Officer's final determination. The Prime Sponsor's exception requested an administrative hearing with regard to the Grant Officer's ineligibility findings;
4. An administrative hearing was waived by the parties and the parties filed briefs with the administrative law judge on the issues in the instant case;
5. On December 2, 1983, a Decision and Preliminary Order was issued by the Office of Administrative Law Judges. The December 2, 1983 Decision held that the Prime Sponsor was to pay the disallowed monies-to-the Department of Labor and ordered the Prime Sponsor to submit "an accurate account of the wages and benefits" paid to each of the twelve program participants;

6. On January 6, 1984 the Prime Sponsor submitted information that \$111,659.69 was paid to the twelve program participants;

7. On February 14, 1984 a Decision and Order was issued by the administrative law judge which ordered the Prime Sponsor to pay \$111,659.69 to the U.S. Department of Labor;

8. The Prime Sponsor appealed the Administrative Law Judge's December 2, 1983 and February 14, 1984 Decision and Orders to the United States Court of Appeals for the Sixth Circuit;

9. On July 16, 1985 the Sixth Circuit Court of Appeals issued a Decision finding (1) that a contract between the Ohio Bureau of Employment Services (OBES) and the City of Cincinnati absolved the City of Cincinnati of liability for wages and fringe benefits associated with eleven (11) participants and (2) that a twelfth participant's wages and fringe benefits were not allowable as there was no record of that participant's employment with the prime sponsor;

10. The Sixth Circuit Court of Appeals also remanded the case to the office of Administrative Law Judges to consider the issue of whether or not the City of Cincinnati - OBES contract was described in the City of Cincinnati's approved Grant;

11. As a result of the aforementioned Decision and Orders and a review of the Title VI Grant, the parties agree that the City of Cincinnati - OBES contract was sufficient to be judged consistent with the provisions of 29 C.F.R. §99.43(c)(3);

12. Based upon the foregoing, the parties agree that \$107,026.85 is allowed in this case. The terms of the allowance are set forth in the Exhibit A attachment to this agreement. The Exhibit A attachment is hereby incorporated into this stipulation and settlement agreement by reference;


13. The parties hereby agree to resolve the remaining debt by payment of \$4,632.74 by the Prime Sponsor to the Employment and Training Administration, United States Department of Labor;

14. The parties agree to the dismissal of this proceeding and that the Order of Dismissal shall have the same force and effect as an order made after full hearing;

15. The Order of Dismissal in this case shall be based solely on the administrative determination and this agreement;

16. The parties waive their right to any further procedural steps before the Administrative Law Judge and the right to contest the validity of any order issued in accordance with this agreement.

Dated: MAY 25, 1986, 1986.


MELVIN J. HOWARD
Grant Officer
Employment and Training Administration
U.S. Department of Labor
230 South Dearborn Street
Chicago, Illinois 60604

MAY 05 1986



RICHARD A. CASTELLINI
City Solicitor
Room 214, City Hall
Cincinnati, Ohio 45202
Telephone: (513) 352-3334

EXHIBIT "A"

ALJ Case No.: 81-CETA-256
Grantee: City of Cincinnati
Final F&D dated April 21, 1981
in which a debt amount was
established at: \$111,659.69

STIPULATED AGREEMENT

The referenced ALJ Case concerns findings which surfaced during an ETA investigation of a CETA complaint (No. 79-CETA-5-321-C). The findings indicated that twelve (12) individuals in the City of Cincinnati Public Service Employment (PSE) program did not meet appropriate eligibility criteria under Title VI of the Act. The disallowed costs consist of the total wages and fringe benefits paid to the questioned individuals.

It was the City of Cincinnati's contention that they were not liable for costs associated with these ineligible participants because their eligibility certifications were processed by the Ohio Bureau of Employment Services (OBES) under a contract with the City. In Title 29 C.F.R. 99.43(c)(3), CETA grantees are not held responsible for costs associated with ineligible participants which were certified through agreements with State Employment Security agencies (SESAs). Such agreements were to be described in an approved grant. The original basis for dispute was ETA's contention that the agreement with OBES was not described in the Cincinnati Title VI grant.

A review of the Cincinnati Title VI grant found that the grantee had submitted several modification requests which included the description of its contract with OBES. Although ETA correspondence to the grantee indicated, some concerns with the OBES agreement, it has been determined that the arrangement was sufficient to be consistent with the provisions of 29 C.F.R. 99.43(c)(3). The costs associated with the ineligible participants, with one (1) exception, are allowed.

The exception concerns a participant who, according to the investigation's findings, performed no CETA related work. The costs pertaining to the wages and fringe benefits of that individual remain disallowed and subject to debt collection.

Costs Disallowed in Final F&D:	\$111,659.59
Costs Allowed per Stipulation:	107,026.85
Costs Disallowed:	4,632.74
Balance of Costs Subject to Debt Collection:	4,632.74

SERVICE SHEET

Re : NANCY COOMER V. CINCINNATI ETA, OHIO AND CINCINNATI ZOO
Case No. 81-CETA-256

Title of Document: RECOMMENDED DECISION

Copies of the above documents were sent to the following:

CERTIFIED MAIL - RETURNED RECEIPT REQUESTED

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U.S. Dept. of Labor
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Room N-2414
Washington, D.C. 20210

Lisa A. Furnish
6-10-86

CERTIFICATE OF SERVICE

Case Name: Nancy Coomer v. Cincinnati, ETA, Ohio, and
Cincinnati Zoo,

Case No. : 81-CETA-256

Document : Order of Dismissal

A copy of the above-referenced document was sent to the
following persons on September 18, 1986.

Kathleen Gorham

CERTIFIED MAIL

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Cincinnati, OH 45202

Hon. Nahum Litt
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